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SENATE

{ REPORT
105-289

WELLTON-MOHAWK TITLE TRANSFER ACT OF 1998

AUGUST 25, 1998.—Ordered to be printed

Filed under authority of the order of the Senate of July 31, 1998

Mr. MURKOWSKI, from the Committee on Energy and Natural
Resources, submitted the following

REPORT

[To accompany S. 2087]

The Committee on Energy and Natural Resources, to which was referred the bill (S. 2087) to authorize the Secretary of the Interior to convey certain works, facilities, and titles of the Gila Project, and designated lands within or adjacent to the Gila project, to the Wellton-Mohawk Irrigation and Drainage District, and for other purposes, having considered the same, reports favorably thereon with an amendment, and recommends that the bill, as amended, do pass.

The amendment is as follows:

Strike out all after the enacting clause and insert in lieu thereof the following:

SECTION 1. SHORT TITLE.—This Act may be referred to as the “Wellton-Mohawk Transfer Act”.

SEC. 2. TRANSFER.—The Secretary of the Interior (“Secretary”) is authorized to carry out the terms of the Memorandum of Agreement No. 8-AA-34-WAO14 (“Agreement”) dated July 10, 1998 between the Secretary and the Wellton-Mohawk Irrigation and Drainage District (“District”) providing for the transfer of works, facilities, and lands to the District, including conveyance of Acquired Lands, Public Lands, and Withdrawn Lands, as defined in the Agreement.

SEC. 3. WATER AND POWER CONTRACTS.—Notwithstanding the transfer, the Secretary and the Secretary of Energy shall provide for and deliver Colorado River water and Parker-Davis Project Priority Use Power to the District in accordance with the terms of existing contracts with the District, including any amendments or supplements thereto or extensions thereof and as provided under section 2 of the Agreement.

SEC. 4. SAVINGS.—Nothing in this Act shall affect any obligations under the Colorado River Basin Salinity Control Act (P.L. 93-320, 43 U.S.C. 1571).

SEC. 5. REPORT.—If transfer of works, facilities, and lands pursuant to the Agreement has not occurred by July 1, 2000, the Secretary shall report on the status of the transfer as provided in section 5 of the Agreement.

SEC. 6. AUTHORIZATION.—There are authorized to be appropriated such sums as may be necessary to carry out the provisions of this Act.

PURPOSE OF THE MEASURE

The purpose of S. 2087, as ordered reported, is to provide for the transfer of Gila Project-Wellton Mohawk Division facilities and lands pursuant to a Memorandum of Agreement entered into between the Wellton-Mohawk Irrigation and Drainage District and the Secretary of the Interior dated July 10, 1998.

BACKGROUND AND NEED

General background

In the 104th Congress, the Committee held hearings on legislation (S. 620) that would provide generic authority for the transfer of certain Reclamation projects to project beneficiaries as well as legislation specific to individual projects. The generic legislation was introduced following the Department of the Interior's statement, as part of the Reinventing Government Initiative, that it would seek to transfer title to appropriate projects where there were no overriding concerns.

S. 620 directed the Secretary of the Interior to transfer title to all Federal property associated with fully paid out Bureau of Reclamation projects to the project beneficiaries in those instances where the beneficiaries have already assumed responsibility for operation and maintenance. The legislation provided that the transfer would be without cost and also made all revenues previously collected from project lands and placed in the reclamation fund available to the beneficiaries under the formula set forth in subsection I of the Fact Finders Act of 1924. The Fact Finders Act provides generally that when water users take over operation of a project, the net profits from operation of project power, leasing of project lands (for grazing or other purposes), and sale or use of town sites are to be applied first to construction charges, second to operation and maintenance (O&M) charges, and third "as the water users may direct".

Proposals to transfer title to selected reclamation facilities have been advanced before. Some have already been authorized by Congress. (See most recently: Pub. L. No. 102-575, title XXXIII transferring facilities to the Elephant Butte Irrigation District, New Mexico, and title XIV, dealing with the Vermejo Project, New Mexico.) Other title transfer proposals, such as ones advanced in 1992 for the Central Valley Project and in the late 1980's for the Solano Project and the Sly Park Unit, have been quite controversial.

As of 1990, the Bureau had identified 415 project components—out of a total of 568 facilities—where operation and management responsibilities had been transferred or were scheduled to be transferred to project users. Section 6 of the Reclamation Act of 1902 (32 Stat. 388, 389) provides in pertinent part that "when the payments required by this act are made for the major portion of the lands irrigated from the waters of an of the works herein provided for, then the management and operation of such irrigation works shall

pass to the owners of the lands irrigated thereby * * *". This section concludes with the following proviso: "*Provided*, That the title to and the management and operations of the reservoirs and the works necessary for their protection and operation shall remain in the Government until otherwise provided by Congress." Historically, the Bureau has usually transferred operation and maintenance to local districts in advance of project repayment where the districts have expressed an interest in taking over management and have the capability to assume the responsibility.

A transfer provision was also included in the 1955 Distribution System Loans Act, as amended. This provision differs from the 1902 law in that it allows transfer of title to the lands and facilities upon repayment of the loan. In addition to the operations and management transfer authorization under the Reclamation Act of 1902, several other title transfer provisions are included in individual project acts. These include Section 7 of the 1928 Boulder Canyon Project Act (Act of Dec. 21, 1928, 45 Stat. 1057, 43 U.S.C. 617 et seq.) which authorizes the Secretary to transfer title of the All-American Canal and certain other related facilities after repayment has been completed; provisions in the Act of September 22, 1959 (Pub. L. No. 86-357, 73 Stat. 641), regarding transfer of title for Lower Rio Grande project facilities; and Pub. L. No. 83-752 (68 Stat. 1045), which directs the Secretary to transfer title to the Palo Verde Irrigation District upon repayment. Under the 1954 Act, the U.S. retained the right to build hydro power facilities at the site and to retain a share in energy production.

The hearings on S. 620 during the 104th Congress demonstrated that generic legislation was not likely to deal with all the possible issues associated with project transfers and that such legislation would wind up being complex and overly burdensome. As a result, discussions began on the potential transfer of several projects, or portions thereof. The Committee considered the transfer of the Collbran project and included language in the Reconciliation measure, H.R. 2491, the Balanced Budget Act of 1995, which was vetoed by the President. The Reconciliation measure also contained language (section 5356) to transfer the Sly Park unit of the Central Valley Project. That language was included in the House amendments and accepted in conference. During the 104th Congress, the Committee also conducted hearings and favorably report legislation on the Carlsbad project (S. 2015), and the distribution portion of the Minidoka project serving the Burley Irrigation District (S. 1921), which was similar to S. 538. The Committee also held hearings on legislation for the transfer of Canadian River, Palmetto Bend and Nueces River projects in Texas (S. 1719). However, none of the measures was enacted into law.

Gila Project, Wellton-Mohawk Division

The Gila Project in western Arizona was originally authorized for construction under a finding of feasibility approved by the President on June 21, 1937, pursuant to section 4 of the Act of June 25, 1910 (36 Stat. 836), and subsection B of section 4 of the Act of December 5, 1924 (43 Stat. 701). It was reauthorized and reduced in area to 115,000 acres by the Act of July 30, 1947 (61 Stat. 628). Further reduction in irrigable acreage of the Wellton-Mohawk Divi-

sion was authorized by the Colorado River Basin Salinity Control Act of June 24, 1974 (88 Stat. 266). Project construction was begun in 1936, and the first water was available for irrigation from the Gila Gravity main Canal on November 4, 1943. Construction of the Wellton-Mohawk Division features was started in August 1949. On May 1, 1952, water from the Colorado River was turned onto the Wellton-Mohawk fields for the first time. The project was essentially complete by June 30, 1957. The Wellton-Mohawk Irrigation and Drainage District operates the irrigation facilities in the Wellton-Mohawk Division.

Wellton-Mohawk is one of the Reclamation Project Districts that have sought agreement with the Bureau of Reclamation for a transfer and is similar to the situation of the Burley Irrigation District which sought transfer of its portion of the Minidoka Project in Idaho. Initial drafts of the legislation were modeled after the Burley legislation reported by the Committee during the first session. Wellton-Mohawk has fully repaid its project costs and was provided a certificate of discharge on November 27, 1991. On July 10, 1998, the District and the Bureau signed a Memorandum of Agreement (see Appendix) that covers the details of the transfer of title. It includes transfer of lands between the federal government and the District, including the acquisition of additional lands for exchange. All transfers will be at fair market value. No change in project operation is contemplated by the transfer and the District will continue to limit irrigated acreage to 62,875 as provided in P.L. 93-320. The transfer would include all facilities and works for which full repayment has been made.

LEGISLATIVE HISTORY

S. 2087 was introduced by Senator Kyl (for himself and Senator McCain) on May 18, 1998. A hearing was held by the Subcommittee on Water and Power on June 16, 1998. Similar legislation (H.R. 3677) was introduced by Congressman Pastor on April 1, 1997.

At the business meeting on July 29, 1998, the Committee on Energy and Natural Resources ordered S. 2087, as amended, favorably reported.

COMMITTEE RECOMMENDATIONS AND TABULATION OF VOTES

The Committee on Energy and Natural Resources, in open business session on July 29, 1998, by a unanimous voice vote of a quorum present, recommends that the Senate pass S. 2087, if amended as described herein.

COMMITTEE AMENDMENT

During the consideration of S. 2087, the Committee adopted an amendment in the nature of a substitute to reflect that the Department of the Interior and the Wellton-Mohawk Irrigation and Drainage District had entered into an agreement covering the details of the proposed transfer. At the time S. 2087 was introduced, the agreement was still under negotiation. The amendment authorizes the Secretary to implement the terms of the agreement, including conveying certain lands and continuing to provide water and power under existing contracts. The amendment also clarifies that the

legislation does not alter any obligations under the Colorado River Salinity Control Act.

SECTION-BY-SECTION ANALYSIS

Section 1 provides a short title.

Section 2 provides the Secretary of the Interior the authority to carry out all provisions of the Memorandum of Agreement covering the transfer of title, including the authority to convey lands as reburied under section 2 of the Memorandum.

Section 3 requires the Secretary of the Interior and the Secretary of Energy to continue to provide water and power as provided under existing contracts and as provided under the Memorandum.

Section 4 is self-explanatory.

Section 5 is self-explanatory.

Section 6 is self-explanatory.

COST AND BUDGETARY CONSIDERATIONS

The following estimate of the cost of this measure has been provided by the Congressional Budget Office:

S. 2087—Wellton-Mohawk Title Transfer Act of 1998

CBO estimates that enacting this bill would result in additional spending of about \$1 million by the Bureau of Reclamation (the bureau) over the next two years, assuming appropriation of the necessary amounts. These funds would pay for necessary environmental studies and legal transactions associated with the transfer of the federally owned Gila Irrigation Project in Arizona to the Wellton-Mohawk Irrigation and Drainage District (the district). Because the bill could affect direct spending by increasing offsetting receipts from the sale of federal land, pay-as-you-go procedures would apply, but CBO estimates that no such change would occur.

S. 2087 would authorize the appropriation of such sums as are necessary to implement a memorandum of agreement between the bureau and the district regarding transfer of the federal irrigation project to the district. Based on information from the bureau, CBO estimates that the federal share of costs to implement this transfer would be about \$1 million over the next two years. In addition, the agreement gives each party the discretion to exchange, or purchase at fair market value, certain land owned by the district or the federal government. Any such purchases or sales of federal land could result in additional federal spending or offsetting receipts. However, CBO expects that any additional land transactions would be accomplished by means of exchanges between the parties and thus would have no budgetary effect.

S. 2087 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act and would impose no costs on state, local, or tribal governments. The district has agreed to pay a share of the costs to implement this transfer as part of its memorandum of agreement with the bureau. These costs, which CBO estimates would total about \$1 million, were voluntarily accepted by the district as part of that agreement.

The CBO staff contacts are Kim Cawley (for federal costs), and Marjorie Miller (for the state and local impact). This estimate was

approved by Robert A. Sunshine, Deputy Assistant Director for Budget Analysis.

REGULATORY IMPACT EVALUATION

In compliance with paragraph 11(b) of rule XXVI of the Standing Rules of the Senate, the Committee makes the following evaluation of the regulatory impact which would be incurred in carrying out S. 2087. The bill is not a regulatory measure in the sense of imposing Government-established standards or significant economic responsibilities on private individuals and businesses.

No personal information would be collected in administering the program. Therefore, there would be no impact on personal privacy.

Little, if any, additional paperwork would result from the enactment of S. 2087, as ordered reported.

EXECUTIVE COMMUNICATIONS

On June 5, 1998, the Committee on Energy and Natural Resources requested legislative reports from the Department of the Interior and the Office of Management and Budget setting forth Executive agency recommendations on S. 2087. These reports had not been received at the time the report on S. 2087 was filed. When the reports become available, the Chairman will request that they be printed in the Congressional Record for the advice of the Senate. The relevant testimony provided by the Bureau of Reclamation at the Subcommittee hearing follows:

STATEMENT OF ELUID L. MARTINEZ, COMMISSIONER, U.S. BUREAU OF RECLAMATION, DEPARTMENT OF THE INTERIOR

Thank you for the opportunity to appear today to provide the Administration's views on S. 2087.

S. 2087 would authorize the Secretary of the Interior to convey certain works, facilities, and title to the Gila Project and designated lands within or adjacent to the Gila Project to the Wellton Mohawk Irrigation and Drainage District, and for other purposes.

Mr. Chairman, the Department believes that the Gila Project and designated lands associated with the Wellton Mohawk District present a good candidate for transfer. However, adopting the language in this legislation is premature given the ongoing efforts between the District and the Bureau of Reclamation to work through a number of unresolved issues. Accordingly, Reclamation opposes S. 2087 as presently drafted.

Background. Since February 1998, when the Wellton Mohawk Irrigation and Drainage District (WMIDD) indicated its interest in title transfer, Reclamation's area office in Yuma, Arizona and the regional office in Boulder City, NV have been meeting with the District, the Western Area Power Administration and the Bureau of Land Management to identify issues that need to be addressed and work through them as much as possible. The sessions have been cooperative and productive. However, the issues related to the lands, salinity control and others are complicated and

the process for resolving them is new to all sides. Reclamation and WMIDD have agreed to complete and sign a Memorandum of Agreement (MOA) to specify the roles and responsibilities for working through all the issues to develop a title transfer agreement in an efficient and timely process agreeable to all sides. WMIDD and Reclamation set a schedule for completing and signing the MOA by November 1998. However, we are attempting to significantly speed up that process and have the MOA completed by July 1, 1998—five months sooner than originally anticipated. I would like to commend Reclamation and the District for the hard work and dedication to making this transfer a reality.

Mr. Chairman, in April, I testified on similar legislation—HR 3766—before the House Resources Subcommittee on Water and Power. I am pleased to note that many of the concerns that were raised in my testimony at that time have been addressed.

I would like to address the Department's concerns with S. 2087 as drafted:

(1) *Memorandum of Agreement*. Section 2(a)(1) defines the MOA as being dated July 1, 1998. While we are working hard to make this deadline, I am concerned that defining the date for execution of the MOA this specifically is problematic.

(2) *Implementing*. Section 2(b) is confusing and should be clarified. The Department strongly opposes the provision which would automatically transfer the lands and facilities by "operation of law" once NEPA is completed and once the fair market value is determined. This language would not allow for an agreement to be reached on mitigation or other issues that might be necessary as a result of the public input received and analysis completed under the NEPA process. Reclamation suggests that the bill language be modified to require that if title is not transferred by the date set forth in the MOA, that Reclamation, after consultation with WMIDD, will submit a report to the Committee on Resources of the United States House of Representatives and to the Committee on Energy and Natural Resources of the United States Senate on the status of the transfer, and any obstacles to its completion.

(3) *Salinity Control*. An important function of the Bureau of Reclamation in this region is to ensure that the United States complies with Minute No. 242 of the Mexican Water Treaty of 1944 related to the permanent and definitive solution to the international problem of the salinity of the Colorado River. Given the importance of this issue and the fact that we have not had the opportunity to fully research or work out the issues associated with salinity control and compliance with Minute No. 242 of the Mexican Water Treaty of 1944, we believe that salinity issues must be directly addressed in any agreement to transfer title. This issue is of critical importance. Work to-

ward this end is on-going as part of the drafting of the MOA, but given the complexity, it has not been finalized.

(4) *Report Requirement.* Section 2(f) requires that the Secretary provide a report to the House Resources Committee and the Senate Energy and Natural Resources Committee within 18 months after enactment on the status and any obstacles. While we do not object to the requirement, we suggest that the language be modified to require that the report be submitted *only if the transfer is not substantially completed*. This way, no report will be necessary if the transfer is completed. Secondly, the 18 month time frame established in S. 2087 does not give Reclamation or the District enough time to work through the numerous issues that need to be addressed.

(5) *Lands.* Some of the lands that are under consideration for transfer are owned by the Bureau of Land Management (BLM) or are BLM withdrawn lands. While BLM has been part of the discussions with Reclamation and WMIDD in the field, a process for addressing the disposition of these lands needs to be developed.

(6) *Tax-exempt financing.* To ensure that the District does not finance its costs in ways that would generate a loss to the Treasury, Section 2 should be amended to include the following language:

(h) Any funds paid by the District pursuant to this section shall not be financed by the proceeds of obligations that qualify as federally tax-exempt obligations under Section 103 of the Internal Revenue Code, as amended.”

In conclusion, Mr. Chairman, this is a good candidate for transfer. I want to reiterate that progress on completing the MOA is well ahead of our original schedule in response to the request of this Committee. Once that is completed and the MOA is signed, I respectfully propose that we work together to craft legislative language to implement the process set forth in that document—which will reflect agreement between the Department and Wellton Mohawk.

CHANGES IN EXISTING LAW

In compliance with paragraph 12 of the rule XXVI of the Standing Rules of the Senate, the Committee notes that no changes in existing law are made by the bill S. 2087, as ordered reported.

A P P E N D I X

MEMORANDUM OF AGREEMENT BETWEEN UNITED STATES DEPARTMENT OF THE INTERIOR, BUREAU OF RECLAMATION, LOWER COLORADO REGION, YUMA AREA OFFICE AND WELLTON-MOHAWK IRRIGATION AND DRAINAGE DISTRICT TO TRANSFER TITLE TO WORKS, FACILITIES AND LANDS IN THE WELLTON-MOHAWK DIVISION OF THE GILA PROJECT, ARIZONA

This Memorandum of Agreement (hereafter referred to as the "Agreement"), made this 10th day of July, 1998, is between the United States of America, Bureau of Reclamation (hereafter referred to as the "United States or Reclamation") and Wellton-Mohawk Irrigation and Drainage District (hereafter referred to as the "District"), an irrigation and drainage district created, organized, and existing under and pursuant to the laws of the State of Arizona, with its principal place of business in Yuma County, Arizona.

The purpose of this Agreement is to define the method and principles by which title to the Gila Project, Wellton-Mohawk Division works, facilities and certain federally-owned lands will be transferred from the United States to the District.

EXPLANATORY RECITALS

Whereas, Reclamation desires to transfer title to, and the District desires to accept transfer of, title now vested in the United States to Gila Project, Wellton-Mohawk Division works, facilities and certain federally-owned lands; and

Whereas, on November 27, 1991, a Certificate of Discharge of Repayment Obligation and Exemption from Acreage Limitation and Full Cost Pricing Provisions of Federal Reclamation Law was issued to the District.

Now, therefore, in consideration of mutual covenants herein contained, the Parties agree as follows:

DEFINITIONS

1. Unless otherwise noted, the following definitions apply only to the terms used in this Agreement:

(a) "Acquired Lands" means those lands within or adjacent to the Division acquired by the United States pursuant to Public Law 93-320 or Public Law 100-512.

(b) "Agricultural Return Flows" means, including but not limited to: (1) water delivered at Reclamation's Main Outlet Drain (MOD) Station 0+00; (2) Gila Gravity Main Canal seepage credited to the District; (3) gravity flow returns, both surface and subsurface, to the Gila River measured at Dome.

(c) “Consolidated Contract” means Reclamation’s contract with the District, Contract No. 1–07–30–W0021 as amended and/or supplemented.

(d) “Division” means the Wellton-Mohawk Division of the Gila Project, Arizona, as authorized under Gila Project Reauthorization Act of July 30, 1947 (61 Stat. 628).

(e) “Exhibit A” lists the tasks, responsible party, schedule, and costs for all land transactions included in this Agreement.¹

(f) “Exhibit B” lists the tasks, responsible party, schedule, and costs to convey all works and facilities of the Division to the District.

(g) “Exhibit C” lists the tasks, responsible party, schedule, and costs of compliance with all laws, regulations, and manual requirements; including but not limited to, environmental compliance clearances, National Environmental Policy Act (NEPA) activities, hazardous waste remediation, National Historic Preservation Act (NHPA) compliance, Comprehensive Environmental Response Compensation and Liability Act (CERCLA) compliance.

(h) “Exhibit D” lists the title transfer contracts to be developed, existing contracts or contract provisions that may require amendment or supplementation due to title transfer; and identifies the task, responsible party, schedule and costs of development, amendment or supplementation.

(i) “Exhibit E” lists all costs to reflect the total cost of this title transfer.

(j) “GVPD/MMWCD Lands” means those Gila Valley Power District and Mohawk Municipal Water Conservation District lands remaining in title to the United States which were acquired by the United States pursuant to Section 2 of the Gila Project Reauthorization Act of July 30, 1974 (61 Stat. 628) for which the repayment obligation has been satisfied.

(k) “Offered Lands” means those lands, primarily in the Gila River Channel, owned by the District, offered to Reclamation for exchange or purchase at fair market value, to allow Reclamation to meet the reasonable and prudent alternatives of the Biological Opinion for Colorado River operations.

(l) “Oversight Committee” means the committee comprised of the Manager of the Yuma Area Reclamation, and the Manager of the District or a designated representative.

(m) “Priority Use Power” means the capacity and energy associated with Parker-Davis Project Generation for full project development and operation; and for use on or by federal Reclamation projects in the Yuma County, Arizona area.

(n) “Project” means the Gila Project as identified by the Gila Project Reauthorization Act of July 30, 1947 (61 Stat. 628).

(o) “Public Lands” means the public lands within and adjacent to the Division that the Secretary of Interior, at his discretion, is authorized to sell to the District at fair market value.

(p) “Reclamation” means the United States Department of Interior, Bureau of Reclamation.

(q) “Secretary” means the Secretary of the Interior or a duly authorized representative.

¹ The exhibits have been retained in committee files.

(r) “Title Transfer Contract” means the contract that incorporates the terms and conditions for, and lists the works, facilities, and lands to be transferred.

(s) “Western” means the Western Area Power Administration of the United States Department of Energy.

(t) “Withdrawn Lands” means those lands within and adjacent to the District that have been withdrawn from public use for Reclamation purposes.

(u) “Works and Facilities” means the works and facilities of the Division, or portions thereof, constructed by the United States for the District pursuant to the Consolidated Contract as more particularly described in Exhibit B of said Contract, or otherwise constructed as Division works and facilities. Works and facilities do not include Acquired Lands or Withdrawn Lands on which the works and facilities have been constructed.

STATEMENT OF PRINCIPLES

2. This Agreement shall protect the financial interest of the United States. The following principles shall guide and direct the transfer process:

(a) *Legislation Required.* The United States holds title to works and facilities in the Wellton-Mohawk Division of the Gila Project, Arizona, as well as lands within and adjacent to the District. The Secretary is not authorized to transfer title to United States assets without express authorization by Congress through legislation. This title transfer will not occur unless, and until, authorized by duly enacted legislation.

(b) *Compliance with Environmental Laws and Regulations.* Reclamation will ensure compliance with NEPA, NHPA, CERCLA and other applicable Federal laws as required for transfer of ownership of Division works, facilities, and lands. The District will ensure that the works, facilities, and lands to be transferred will be operated in accordance with authorized purposes. No change in project purpose, operation, or use is contemplated or intended by the District or the United States as a result of this transfer.

(c) *Lands Transactions.* The District and Reclamation shall jointly identify lands within and adjacent to the District to be purchased or exchanged or otherwise transferred by and between the District and Reclamation. Acquired Lands, Public Lands, and Withdrawn Lands shall be appraised in accordance with practices approved by the Secretary to ensure that the United States receives fair market value for the lands purchased or exchanged. Withdrawn Lands may be acquired by the District at fair market value provided that Congress enacts legislation authorizing and providing for such acquisition and transfer. The acquisition costs of GVPD/MMWCD lands have been fully repaid by the District and the GVPD/MMWCD lands shall be transferred to the District without cost to the District except as identified in Exhibit A.

(d) *Agricultural Return Flows (ARFs) From the District Delivered to the MOD at Station 0+00.* The District agrees to accept Reclamation’s goal of delivery of ARFs at the Yuma Desalting Plant (YDP) design capacity at MOD Station 0+00, and that the District water management activities will reflect this goal to the extent that the goal remains relevant regardless of whether the United States op-

erates the YDP or replaces the bypass stream in accordance with Public Law 93–320, as amended. Further, District water management activities will reflect Reclamation’s goal that salinity levels of ARF’s delivered at MOD Station 0+00 shall not increase above historical salinity levels of ARFs delivered at MOD Station 0+00.

(e) *Agricultural Production Lands*: Pursuant to Public Law 93–320, as amended, and the Consolidated Contract, the District is restricted to irrigating not more than 62,875 acres of land.

(f) *Repair of Main Outlet Drain Extension (MODE)/MOD*: The District will cooperate with Reclamation in discontinuing use of MODE/MOD for two weeks each year or as needed for repairs. The District will also inform Reclamation of any outages that may occur in relation to the ARFs.

(g) *Applicability of Existing Water and Power Contracts*: The Secretary and the District shall maintain in place and in force all contracts which provide for Colorado River water and Parker-Davis Project Priority Use Power, and the delivery thereof, unless such contract or contracts are modified or terminated by mutual consent of the parties thereto or as otherwise provided in said contracts. This Agreement shall not alter, supplement or amend any contract. Title to the Western’s Wellton-Mohawk Substation, transmission lines and substations associated with Pumping Plant One and Pumping Plant Three, underlying lands, and all appurtenant rights of way and easements shall remain in the name of the United States. Notwithstanding the transfer of title to works, facilities, and lands, the Secretary is authorized and shall continue to provide for and deliver water and Priority Use Power to Wellton-Mohawk in accordance with the terms of the Consolidated Contract including any amendments, supplements, or extensions thereof and the Power Management Agreement (Reclamation’s and Western’s Contract Numbers 6–CU–30–P1136, 6–CU–30–P1137 and 6–CU–30–P1138) including any amendments, supplements, or extensions thereof.

(h) *Works and Facilities*: This title transfer shall include all works and facilities of the Division.

(i) *Rights of Way and Easements*: The transfer of works and facilities shall include any and all rights of way and easements appurtenant to the operation of the works and facilities including works and facilities in the Gila River channel. The transfer of rights of way and easements shall not result in any impairment or defect in any right of way or easement. Each right of way and easement shall be in full force and effect following transfer. Conveyance and transfer of easements and rights of way shall be approved by Reclamation and the District.

EFFECTIVE DATE

3. This Agreement shall be signed before legislation is enacted. The signed Agreement shall become effective upon enactment of authorizing legislation. No transfer of title to works, facilities and lands shall occur unless and until legislation authorizing this transfer is enacted by Congress. The target date for completion of the transfer of title is December 31, 2001, or such date as set by Congress.

TERMINATION

4. This Agreement may be terminated, if permitted by duly enacted legislation, by either party 30 days after receiving written notification from the party requesting termination.

In any event, this Agreement will terminate upon execution of the Title Transfer Contract. Upon termination, all outstanding, irrevocable, reimbursable obligations incurred by Reclamation under the terms of this Agreement shall be satisfied by the District. Any funds advanced by the District for reimbursable costs not expended or obligated by Reclamation shall be refunded to the District.

REPORT TO CONGRESS

5. If title transfer has not occurred, pursuant to duly enacted legislation and this Agreement, by July 1, 2000, Reclamation will provide a report to the Committee on Resources of the United States House of Representatives and to the Committee on Energy and Natural Resources of the United States Senate. The report will cover the status of the Title Transfer, any obstacles to completion of the transfer as provided in the legislation, and the anticipated date for such transfer.

The goal of Reclamation and the District is that within one hundred eighty days of the execution of the Title Transfer Contract, the Secretary shall convey to the District all right, title and interest of the United States to the facilities, works and lands to be conveyed and transferred to the District; provided, that such transfer is not otherwise directed by Congress.

LAND PURCHASE PAYMENT

6. The District shall pay such sums, and on such terms, as are stated in the Title Transfer Contract for lands purchased by the District pursuant to this Agreement.

RESPONSIBILITY FOR WORKS AND FACILITIES FOLLOWING TRANSFER

7. (a) *Operation, Maintenance, Repair and Replacement.* The District shall assume full responsibility and liability for all duties and costs associated with the operation, maintenance, repair, replacement, enhancement, and betterment of the following transfer. The District shall not be eligible for any federal funding under federal Reclamation law to assist the District's activities listed in this paragraph.

(b) *Other Federal Assistance.* This title transfer action is not intended to affect the District's right to request or receive federal assistance under other federal programs.

COSTS

8. The following cost allocation, which is consistent with existing Reclamation policy, applies in the absence of specific criteria established through legislation.

(a) *Cost-effective Cost-efficient.* The goal is for Reclamation and the District to seek the most cost effective means in developing and implementing this transfer. It is the intent of the parties to accomplish this transfer of title and assignment of interest in the most

fiscally responsible manner consistent with proper land and facility title transfer practices.

(b) *Cost Shared.* The District and Reclamation shall 50–50 cost share all expenses associated with NEPA compliance, CERCLA, and NHPA, in accordance with Exhibit C. Reclamation will not be responsible for mitigation costs associated with this transfer. The cost of preparing and presenting the report to Congress shall be shared equally by Reclamation and the District.

(c) *District's Cost Responsibility.* The District will be responsible for payment of costs directly attributable to and solely occasioned by the transfer as they relate to works, facilities, and lands transferred to the District. Such costs include normal costs of land transfer, purchase, and/or exchanges including, but not limited to, title examinations, title searches, boundary surveys, appraisals and legal descriptions and recording costs.

(d) *Reclamation's Cost Responsibility.* Reclamation will be responsible for Reclamation costs associated with miscellaneous transfer activities, consisting of contract development, contracting negotiations, research activities undertaken by Reclamation staff, including preparation and execution of this Agreement, costs associated with works and facilities transfer, costs of preparation of property voucher for transfer of physical property, and transfer costs for lands transferred to the United States.

COOPERATION, PROCEDURES AND RESPONSIBILITIES

9. (a) Reclamation will be responsible for the following:

1. To establish a unique cost authority number to track and account for the cost of services provided under the terms of this Agreement and to provide the District with quarterly updates itemized by month.

2. To provide the District with copies of all contracts, invoices, and other writings which evidence obligations pursuant to this Agreement.

3. To ensure compliance with applicable federal laws.

4. To draft and execute this Agreement and the Title Transfer Contract(s) and other documents.

5. Reclamation will be responsible for CERCLA remediation on the lands under Reclamation control.

(b) The District will be responsible for the following:

1. To establish a process to track and account for the costs associated with title transfer activities provided under the terms of this Agreement and to provide Reclamation with quarterly updates itemized by month.

2. To review and comment on the draft Title Transfer Contract.

3. To provide to Reclamation environmental compliance reviews and documents that are necessary for Reclamation to accept or adopt the environmental compliance actions undertaken by the District with respect to this title transfer.

4. To provide any required boundary surveys, title searches, appraisals, and legal descriptions for lands associated with this conveyance to be transferred, purchased, and/or exchanged including deeds therefore.

5. The District will be responsible for CERCLA remediation on the lands under the District's control.

(c) Areas of mutual responsibility:

1. To determine which lands will be exchanged, sold, purchased, conveyed or otherwise transferred to the District or Reclamation.
2. To identify works, facilities, and lands to be transferred.
3. To ensure, and provide for, reasonable and appropriate public participation.
4. To identify in-kind services. Credit may be given for in-kind services directly related to this project, and agreed to by the Oversight Committee. In-kind services will not be credited for an amount greater than Reclamation's cost to do the work. These costs will be outlined in the Exhibits.

OVERSIGHT COMMITTEE

10. The Oversight Committee shall provide the administrative oversight to ensure a timely and successful transfer. This Committee shall guide transfer activities including the formation and guidance of technical committees. The Committee has the authority to approve variations in tasks, schedules, costs and budget to meet the purpose of this Agreement.

LIABILITY

11. The District shall hold the United States harmless and shall indemnify the United States for any and all claims, costs, damages, and judgments of any kind arising out of any act, omission, or occurrence relating to the works, facilities and lands at issue herein, except for such claims, costs, or damages arising from acts of negligence committed by the United States or by its employees, agents, or contractors prior to the date of title transfer for which the United States is found liable under the Federal Tort Claims Act, 28 U.S.C. 2671 *et. seq.* or as provided by Congress in transfer legislation.

EXHIBITS MADE PART OF THIS AGREEMENT

12. The Exhibits as attached hereto are incorporated and made a part of this Agreement and each shall be effective until modified or superseded as provided in this Agreement. The Exhibits may be amended upon mutual agreement of the District and Reclamation.

CONTINGENT ON APPROPRIATIONS OR ALLOTMENT OF FUNDS

13. The expenditure or advance of any money for the performance of any obligation of the United States under this Agreement shall be contingent upon the appropriation or allotment of funds. Absence of appropriations or allotment of funds shall relieve Reclamation and the District from any obligations under this Agreement. No liability shall accrue to the United States in case funds are not appropriated or allotted.

NOTICES

14. Any notice, demand, or request authorized or required by this Agreement shall be deemed to have been given by the District when mailed or delivered to the Area Manager, Yuma Area Office, Bureau of Reclamation, and by Reclamation when mailed or delivered to the Manager of the District. The designation of the ad-

dresser or the address may be changed by written notification to the parties.

COMPLIANCE WITH LAWS AND REGULATIONS

15. Following title transfer, the District shall comply with all applicable federal and state laws and regulations.

THIRD PARTY AGREEMENTS

16. The United States shall, if assignable, assign to the District its rights, duties, obligations, and responsibilities which exist as a result of third-party agreements in the Division, including the granting of any right to use, cross, or occupy any of the facilities, works and lands. The District shall honor all third-party agreements for the length of the agreement and shall provide all third parties with the same allowances that they receive under the existing contracts.

OFFICIALS NOT TO BENEFIT

17. No member of, or delegate to, Congress, resident Commissioner, or official of the District shall benefit from this Agreement other than as a water user or landowner in the same manner as other water users or landowners.

AMENDMENT, MODIFICATION, AND SUPPLEMENTATION

18. This Agreement may be amended, supplemented or modified, in writing and signed by Reclamation and the District. Any Exhibit referenced herein may be later attached as a supplement to this Agreement and shall be signed by Reclamation and the District.

In duplicate

Accepted and agreed to this 10th Day of July, 1998.

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